

1 Michael Freund SBN 99687
2 Law Office of Michael Freund
3 1915 Addison Street
4 Berkeley, CA 94704
5 Telephone: (510) 540-1993
6 Facsimile: (510) 540-5543

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8 Attorney for Plaintiff
9 DAVID STEINMAN

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 DAVID STEINMAN,

14 Plaintiff,

15 v.

16 THE DIAL CORPORATION and DOES 1 to
17 100,

18 Defendants.

Case No.

**[PROPOSED] CONSENT
JUDGMENT**

1 **I. INTRODUCTION**

2 1.1 On April ____, 2010, Plaintiff David Steinman (“Plaintiff”) as a private attorney
3 general and in the public interest filed a Complaint for Injunctive and Declaratory Relief and Civil
4 Penalties against Defendant The Dial Corporation (“Dial,” and collectively the “Parties”). The
5 Complaint alleges that Dial violated the Safe Drinking Water and Toxic Enforcement Act of 1986,
6 Health and Safety Code Section 25249.5 et seq., also known as “Proposition 65,” through the sale of
7 Dial Clean & Soft Aloe Antibacterial Hand Soap (the “Covered Product”), by knowingly and
8 intentionally exposing consumers to 1,4-dioxane, a chemical known to the State of California to
9 cause cancer, without first providing a clear and reasonable warning. Dial denies the allegations in
10 the Complaint, and further denies that the Covered Product requires a Proposition 65 warning.

11 1.2 The Complaint is based on allegations contained in a Notice of Violation dated March
12 5, 2009, served on the California Attorney General, other public enforcers, and Dial. A true and
13 correct copy of the Notice of Violation is attached hereto as Exhibit A.

14 1.3 Plaintiff states that he is a committed environmentalist, journalist, consumer health
15 advocate, publisher, and author, whose major books include *Diet for a Poisoned Planet* (1990, 2007),
16 *The Safe Shopper’s Bible* (1995), *Living Healthy in A Toxic World* (1996), and *Safe Trip to Eden:
17 Ten Steps to Save the Planet Earth from Global Warming Meltdown* (2007); through this legal action,
18 Plaintiff seeks to eliminate exposure to 1,4-dioxane and to protect the public health by reducing or
19 eliminating the public’s exposure to toxic chemicals; he is, and at all times set forth herein has been,
20 acting in the public interest under provisions of Proposition 65, as set forth at Health and Safety Code
21 section 25249.7(d).

22 1.4 Dial is a business entity that employs ten or more persons and manufactures,
23 distributes and/or sells the Covered Product to consumers within the State of California.

24 1.5 The Parties enter into this Consent Judgment pursuant to a full settlement of disputed
25 claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged
26 litigation. Plaintiff has diligently prosecuted this matter and is settling this case in the public interest.

27 1.6 Nothing in the Consent Judgment shall be construed as an admission by Dial of any
28 fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or

1 be construed as an admission by Dial of any fact, issue of law or violation of law, at any time, for any
2 purpose. Nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy or
3 defense that Dial may have in any other or further legal proceedings. Nothing in the Consent
4 Judgment, or any document referred to herein, shall be construed as giving rise to any presumption or
5 inference of admission or concession by Dial as to any fault, wrongdoing or liability whatsoever.
6 However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and
7 duties of Dial under the Consent Judgment.

8 **II. JURISDICTION AND VENUE**

9 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
10 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that venue
11 is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to
12 the terms set forth herein.

13 **III. INJUNCTIVE RELIEF — REFORMULATION AND TESTING**

14 **3.1 Reformulation of Dial Clean & Soft Aloe Antibacterial Hand Soap**

15 As of the Effective Date, Dial shall not ship for sale in California any Covered Product
16 without the Proposition 65 warning described in Section 3.2, unless the Covered Product has been
17 manufactured so that it will contain no more than 10 parts per million (“ppm”) of 1,4-dioxane, as
18 defined in, and verified by, the Certification Protocol described in Section 3.3. To the extent Dial is in
19 compliance with the obligations imposed by the Section 3.3, a Proposition 65 warning is not required
20 for the Covered Product.

21 **3.2 Clear and Reasonable Warning**

22 To the extent that any Covered Product for sale in California requires a Proposition 65
23 warning, Dial shall provide the following clear and reasonable warning to consumers:

24 **WARNING:** This product contains a chemical known to the State of California to cause cancer.

25 The warning shall be prominently affixed to or printed on the container of the Covered
26 Product with such conspicuousness, as compared with other statements or designs on the container,
27 as to render it likely to be read and understood by an ordinary purchaser or user of the Covered
28 Product.

1 **3.3 Certification Requirements**

2 Commencing no more than ten days after the Effective Date, Dial shall commence selection
3 of samples and testing of the Covered Product at either (1) its analytical chemistry laboratory, which
4 is qualified to conduct assays on FDA-regulated products and is subject to inspection by the FDA, or
5 (2) at any laboratory that is certified by the California Environmental Laboratory Accreditation
6 Program. Dial shall use either of the two testing protocols described in Exhibit B. Dial may choose,
7 in its sole discretion, either of the two testing protocols or locations for the testing required by this
8 Consent Judgment.

9 Following entry of this Consent Judgment, Plaintiff may, at his option, access and observe
10 Dial’s analytical chemistry laboratory. Plaintiff agrees to submit a written request to obtain access to
11 Dial’s laboratory at least sixty days prior to the anticipated visit, and Dial shall make commercially
12 reasonable efforts to accommodate Plaintiff’s requested date. Plaintiff further agrees to comply with
13 Dial’s safety, security and other procedures during his visit (including, without limitation, execution
14 of a confidentiality agreement) to be determined in Dial’s sole discretion. Plaintiff agrees that he will
15 be able to access Dial’s laboratory once, and that the visit will not involve discussion of
16 methodology, instrumentation, or raw materials. Plaintiff shall be responsible for all fees, costs and
17 expenses associated with his visit to Dial’s laboratory. All correspondence regarding the visit shall
18 be directed to the addresses listed in Section 16.

19 Testing shall be conducted in each of four consecutive quarters.¹ Dial shall maintain
20 certifications from the Senior Vice President of Research and Development attesting that randomly
21 selected samples from three lots of the Covered Product have levels of 1,4-dioxane that are below 10
22 ppm when analyzed using the methods referenced above. Dial shall be required to conduct no further
23 testing as long as no single quarterly sample tested contains a concentration of 1,4-dioxane in excess
24 of 10 ppm.

25 _____
26 ¹ In no way does this Consent Judgment require Dial to manufacture the Product each quarter.
27 To the extent the Product is not manufactured in any particular quarter, there is no testing
28 requirement. If the Product is not manufactured in one or more quarters, the next quarter in which
the product is manufactured shall be deemed a “consecutive quarter” for purposes of Section 3.3. If
Dial ceases to manufacture the Product, there shall be no further testing obligation.

1 In the event that a single quarterly sample contains a concentration in excess of 10 ppm, Dial
2 shall test and maintain certifications for four additional quarters, or until all of the samples measured
3 in four consecutive quarters contain concentrations of 10 ppm or less of 1,4-dioxane, whichever
4 occurs first. If Dial changes the formulation or processing of the Covered Product in any manner that
5 would reasonably be expected to result in an increase in the levels of 1,4-dioxane after testing has
6 been discontinued, Dial shall test randomly selected samples from three lots of the new formulation
7 of the Covered Product to ensure that those samples contain a 1,4-dioxane concentration of 10 ppm or
8 less.

9 3.4 **Maintenance of Records**

10 Dial shall retain copies of the certifications referenced in Section 3.3 for a period of four years
11 from the date testing commenced and shall provide such certifications to Plaintiff upon written
12 request. Dial shall also retain copies of the test results for a period of four years from the date of
13 testing and shall provide copies of the quarterly test reports to the Attorney General upon his written
14 request.

15 **IV. PAYMENT**

16 In full and final satisfaction of Plaintiff's costs of litigation, attorney's fees and all other
17 expenses, Dial shall make a total payment of \$25,000, payable within fifteen (15) business days of
18 receipt of the Notice of Entry of Consent Judgment by Defendant. Said payments shall be for the
19 following:

20 A. \$13,000 as a payment in lieu of penalties, payable to Freedom Press, which includes
21 \$10,000 for reimbursement of out-of-pocket expenses, and \$3,000 for the purpose of testing
22 consumer products for 1,4-dioxane, formaldehyde and other toxic chemicals; and research into
23 alternatives to the use of toxic chemicals, the promotion of those alternatives. The Tax Identification
24 No. for Freedom Press is 95-4736088.

25 B. \$12,000 payable to Michael Freund as reimbursement of Plaintiff's reasonable
26 attorney's fees and costs.

27 The foregoing payments shall be mailed to the Law Office of Michael Freund at the address
28 in Section 16 of this Consent Judgment.

1 **V. RELEASE AND CLAIMS COVERED**

2 This Consent Judgment entered by the Court is a final and binding resolution between and
3 among Plaintiff, his agents, employees, attorneys, successors, and assigns, acting on behalf of the
4 general public, and Dial, its parents, subsidiaries, affiliates, divisions, subdivisions, officers,
5 directors, shareholders, employees, agents, attorneys, successors, customers, and assigns (“Released
6 Entities”), of any and all claims, known or unknown, that have been or could have been asserted by
7 Plaintiff for violations of Proposition 65 by Dial or by any other entity arising from the presence of
8 Proposition 65 chemicals in the Covered Product. Except for such rights and obligations as have
9 been created under this Consent Judgment, Plaintiff, on his own behalf and in bringing an action in
10 the public interest pursuant to California Health and Safety Code Section 25249.7(d) with respect to
11 the matters alleged in the complaint, does hereby fully, completely, finally, and forever release,
12 relinquish and discharge Dial and (“Released Entities”) from any and all claims, actions, causes of
13 action, demands, rights, debts, agreements, promises, liabilities, damages, accountings, costs, and
14 expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever which
15 Plaintiff has or may have against Dial and the Released Parties, arising directly or indirectly out of
16 the failure to provide clear and reasonable warnings pursuant to Proposition 65 of exposure to 1,4-
17 dioxane in the Covered Product (“Released Claims”). Compliance with the terms of this Consent
18 Judgment shall be deemed to be compliance with Proposition 65 as applied to the Covered Product.

19 It is the intention of the Parties to this release that, upon entry of Consent Judgment and
20 conclusion of any litigation relating to (i) this Consent Judgment and the Consent Judgment entered
21 by the Court and (ii) and the lawsuit itself, that this Consent Judgment and Consent Judgment entered
22 by the Court shall be effective as a full and final accord and satisfaction and Release of every
23 released claim up to and including the date of entry of the Consent Judgment. In furtherance of this
24 intention, Plaintiff acknowledges that it is familiar with California Civil Code section 1542, which
25 provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE
28

1 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
2 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3 Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may have,
4 under California Civil Code section 1542 (as well as any similar rights and benefits which they may
5 have by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff
6 hereby acknowledges that it may hereafter discover facts in addition to, or different from, those which it
7 now knows or believes to be true with respect to the subject matter of this Consent Judgment and the
8 Consent Judgment entered by the Court and the released claims, but that notwithstanding the foregoing,
9 it is Plaintiff's intention hereby to fully, finally, completely and forever settle and release each, every and
10 all Released Claims, and that in furtherance of such intention, the release herein given shall be and
11 remain in effect as a full and complete general release as to Dial and the Released Entities,
12 notwithstanding the discovery or existence of any such additional or different facts. Plaintiff hereby
13 warrants and represents to Dial and the Released Parties that (a) he has not previously assigned any
14 released claim, and (b) he has the right, ability and power to release each released claim.

15 **VI. EFFECTIVE DATE**

16 As used herein, "Effective Date" shall mean January 31, 2010 or 15 days after this Consent
17 Judgment becomes final, whichever is later.

18 **VII. CONTINUING OBLIGATIONS**

19 Except as set forth in section V of this Consent Judgment, nothing herein shall be construed as
20 diminishing Dial's continuing obligations to comply with Proposition 65.

21 **VIII. SEVERABILITY OF UNENFORCED PROVISIONS**

22 In the event that any of the provisions hereof are held by a court to be unenforceable, the
23 validity of the enforceable provisions shall not be adversely affected.

24 **IX. ENFORCEMENT OF CONSENT JUDGMENT**

25 Plaintiff may, by motion or order to show cause before this Superior Court of the State of
26 California, enforce the terms and conditions contained in the Consent Judgment entered by the Court.
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28

1 **X. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment entered by the Court shall apply to, be binding upon and inure to the
3 benefit of Dial and the Released Entities, and upon Plaintiff on his own behalf and on behalf of the
4 general public, as well as his employees, agents, successors, attorneys and assigns.

5 **XI. MODIFICATION OF CONSENT JUDGMENT**

6 This Consent Judgment entered by the Court may be modified only upon written agreement of
7 the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-
8 noticed motion of any Party to the Consent Judgment as provided by law and upon entry of a
9 modified Consent Judgment by the Court.

10 **XII. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to enforce, modify or terminate the Consent
12 Judgment.

13 **XIII. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

14 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
15 Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party
16 represented and legally to bind that party.

17 **XIV. COURT APPROVAL**

18 Pursuant to Health & Safety code section 25249.7, Plaintiff shall prepare and file a motion to
19 approve the Consent Judgment, together with all supporting papers, within 15 days of execution by
20 all parties. The Consent Judgment shall be effective only after it has been executed by the Court.
21 Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

22 **XV. EXECUTION IN COUNTERPARTS**

23 This Consent Judgment may be executed in counterparts and/or by facsimile, which taken
24 together shall be deemed to constitute one document.

25 **XVI. NOTICES**

26 All notices required to be given to either Party to this Consent Judgment by the other shall be
27 sent to the following agents, which may be changed from time to time following written notice to all
28 parties:

1 **For Plaintiff David Steinman:**

2 David Steinman
3 Freedom Press, Inc.
4 120 N. Topanga Canyon, Suite 107
5 Topanga, CA 90290

6 Michael Bruce Freund
7 Law Offices of Michael Freund
8 1915 Addison Street
9 Berkeley, CA 94704

10 **For Defendant The Dial Corporation:**

11 Brad Gazaway
12 The Dial Corporation
13 19001 N. Scottsdale Road
14 Scottsdale, AZ 85255

15 Michèle Corash
16 Morrison & Forester LLP
17 425 Market Street
18 San Francisco, CA 94105-2482

19 **XVII. GOVERNING LAW**

20 The validity, construction and performance of this Consent Judgment shall be governed by the
21 laws of the State of California.

22 **XVIII. DRAFTING**

23 The terms of this Consent Judgment have been reviewed by the respective counsel for the
24 Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss
25 the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of
26 this Consent Judgment entered thereon, the terms and provisions shall not be construed against either
27 Party.

28 **XIX. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

In the event a dispute arises with respect to either Party's compliance with the terms of this
Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and
endeavor to resolve the dispute in an amicable manner. No action may be filed in the absence of such
a good faith attempt to resolve the dispute beforehand. In the event an action is filed, however, the
prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding
sentence, the term "prevailing party" means a party who is successful in obtaining relief more

1 favorable to it than the relief that the other party was amenable to providing during the parties' good
2 faith attempt to resolve the dispute that is the subject of such enforcement action.

3 **XX. ENTIRE AGREEMENT**

4 This Consent Judgment contains the sole and entire agreement and understanding of the
5 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
6 commitments and understandings related hereto. Except as set forth herein, no representations, oral
7 or otherwise, express or implied, have been made by any party hereto. No other agreements not
8 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9 **IT IS SO STIPULATED:**

THE DIAL CORPORATION

10
11 Dated: _____, 2010

Brad Gazaway
The Dial Corporation

12
13
14 Dated: _____, 2010

David Steinman

15 **APPROVED AS TO FORM:**

16 Dated: _____, 2010

MORRISON & FOERSTER LLP

17
18 _____
Michèle B. Corash
Attorney for Defendant
The Dial Corporation

19
20
21 Dated: _____, 2010

LAW OFFICE OF MICHAEL FREUND

22
23 _____
Michael Freund
Attorney for Plaintiff
David Steinman

24
25 **IT IS SO ORDERED:**

26 Dated: _____, 2010

27 _____
JUDGE, SUPERIOR COURT